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**LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT**

**NOTIFICATION**

The 5th December 2012

No. 172—li-1(J)-1/2009-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 8th October 2012 in Industrial Dispute Case No. 4 of 2009 of the Presiding Officer, Labour Court, Jeypore, Koraput to whom the industrial dispute between the Management of the M/s. BILT, Unit-Sewa, Jeypore and their Workman Shri Dhanu Muduli, ex-Helper was referred to for adjudication is hereby published as in the Schedule below :—

**SCHEDULE**

**IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT**

**INDUSTRIAL DISPUTE CASE No. 4 OF 2009**

**Dated the 8th October 2012**

*Present :*

Shri D. C. Mishra, O.S.J.S. (Jr. Branch),  
Presiding Officer,  
Labour Court, Jeypore,  
Dist. Koraput.

*Between :*

The Management of D.G.M. (H.R.), . . . First Party—Management  
M/s BILT Sewa Jeypore,  
Gaganapur, Jeypore R.S.,  
Dist. Koraput.

*Versus*

Shri Dhanu Muduli, . . . Second Party—Workman  
S/o late Dania Muduli,  
At Aurabindanagar, Parabeda,  
P.O. Jeypore, Dist. Koraput.

Under Sections 10 and 12 of the Industrial Disputes Act, 1947

*Appearances :*

Shri K. N. Samantara, Advocate, Jeypore.	. . For the Management
Shri B. V. Ramana, A/R of the workman, Jeypore.	. . For the Workman
Date of Argument	. . 13-9-2012
Date of Award	. . 8-10-2012

**AWARD**

The matter arises out of a reference made by the State Government in their Labour & Employment Department, Odisha, Bhubaneswar under Section 12(5) read with Section 10(1) of the I. D. Act, 1947 vide their Memo. No. 3650(5)-LE., dated the 15th April 2009 for adjudication of the following disputes :—

**SCHEDULE**

"Whether the action of the management of M/s. Ballarpur Industries Ltd., Unit Sewa, Gaganapur, Jeypore, District Koraput in terminating the services of Shri Dhanu Muduli, ex- Helper with effect from the 27th March 2008 is legal and/or justified ? If not, what relief the workman is entitled to ?"

2. The workman has filed this case with prayer for reinstatement in service and back wages.

Briefly stated the workman's case runs thus :—

That the workman Shri Dhanu Muduli started his service under Sewa Paper Mill Ltd., from March 1984 as a Helper and continued as such till 1-4-1990 when the Board for Industrial Financial Reconstructions (in short B.I.F.R.) passed order in case No. 183/1989 holding that the Sewa Paper Ltd. was merged with the BILT (Unit Sewa) by virtue of the said order of the B.I.F.R., the service of the workman was transferred to the BILT (Unit-Sewa) but as per the MoU, dated the 9th August 1990, he was allowed to join the service under the BILT in February, 1992 whereas his absorption order was issued on the 14th September 1992. Therefore, the workman claims that he was in continuous service from March, 1984 to 26-3-2008 when the first party management, i.e., opposite party No. 2 illegally terminated him from service though he is not the competent authority to do so.

It is alleged that the opposite party No. 2 (Deputy General Manager) issued charge sheet No. 07—BILT-U.S./H.R., dated the 10th March 2007 (Ext. 1) to the workman and after enquiry terminated him from job with allegation that the workman remained absent from duty for 112.5 days in between January, 2006 and December, 2006 without prior sanction of the authority.

It is alleged that the above allegation was levelled against the workman out of extraneous grounds and malignancy but not passed on any valid and legal record or evidence. According to the workman, the management was pre-determined to terminate him (delinquent workman) from job for which in the pretext of domestic enquiry appointed an Advocate as E.O. which is not permissible under the standing order of the Company. It is also alleged that the management paid huge amount to the Enquiry Officer to prepare the enquiry report as per direction and dictation of the management. According to the workman, the Deputy General Manager is not the appointing authority and in absence of delegation of power by the Board of Directors of the Company, he is not empowered to

issue charge sheet or termination order against the workman. It is specifically pleaded that, the so called termination order, dated the 21st March 2008 of the management reveals that it was an intimation about the intention of the management to terminate him but actually it is not the termination order for which he is deemed to be continuing in service. The workman has further averred that, the charge is not specific and vague for which it is not sustainable in the eye of law and therefore the subsequent actions of the management are also not sustainable in the eye of law and should be treated as nonest in the eye of law. In the above premises prayer has been made to set aside the order, dated the 21st March 2008 of the Deputy General Manager, H.R. and to pass orders directing the first party management to reinstate the workman in service with back wages.

3. The management has contested the case by filing joint W.S. denying the claims and allegations levelled against them by the workman. According to them, the workman was in the habit of remaining unauthorisedly absent from duty for long periods in the preceding years for which he was censured on several occasions suspended for 2 days in the year 2002 and his increment was stopped for the year 2001-2002, but despite all these actions, the workman did not amend him rather continued his habit of remaining absent for long periods without permission of the authority for which the work Schedule of the management was affected to a great extent and this was putting a negative impact on co-workman. It is alleged that, during the year 2006, the workman remained absent for 112.5 days for which he was charge sheeted and in domestic enquiry he was found guilty for which show cause notices were issued to him and as his explanations were not satisfactory, he was removed from service. According to the management, the domestic enquiry has been conducted properly and due opportunities have been given to the workman during the enquiry for which there is no violation of natural justice or any standing order of the Company. It is further averred that, as per Clause 12-A (a) and 12-B (ii) (iv) of the Certified Standing Order of the Company, the negligence of the workman was grave and serious misconduct for which he has been terminated by the management as per Clause No. 4 of appointment letter of the workman and therefore it is legal and justified. It is also averred that, the appointment of an Advocate is not contrary to the standing orders of the management as mentioned at Page 3, i.e., S.O. 14 (II) and S.O. 2 (b) of the claim statement of the workman. Therefore, they have prayed for dismissal of the case of the workman with costs.

4. In order to substantiate the case the workman Dhanu Muduli has been examined as a workman witness No. 1. Documents marked Exts. 1 to 6 have been proved from workman side. Ext. 1 is the xerox copy of agreement, dated the 22nd October 1991 between the management and the workman. Ext. 2 is the xerox copy of charge sheet, dated the 10th March 2007 issued to the workman by the management. Ext. 3 is the xerox copy of appointment order of Enquiry Officer by the management. Ext. 4 is the xerox copy of first show cause notice, dated the 2nd June 2007 and Ext. 5 is the xerox copy of second show cause notice, dated the 6th January 2007. Ext. 6 is the final order of D.P., dated the 21st March 2008.

Shri Samir Kumar Raut, Assistant Manager (H.R.), BILT, Unit-Sewa, has been examined as management witness No. 1. Documents marked Ext. A to Z have been proved from management side. Ext. A is the xerox copy of Appointment Letter of the workman, dated the 22nd October 1991. Ext. B is the xerox copy of the Joining Letter of the workman, dated the 14th December 1991. Ext. C is the xerox copy of the Terms and Conditions of Employment, dated the 14th September 1992. Ext. D is the xerox copy of transfer order of workman, dated the 6th August 1993. Ext. E is the xerox copy of warning of caution letter, dated the 30th September 1993. Ext. F is the xerox copy of the show cause letter, dated the 6th December 1993. Ext. G is the xerox copy of the another warning of caution letter, dated the 17th October 1994. Ext. H is the xerox copy of show cause letter issued to the workman, dated the 29th December 1994. Ext. J is the xerox copy of another show-

cause letter, dated the 1st July 1995. Ext. K is the xerox copy of explanation letter submitted by the workman, dated the 7th July 1995. Ext. L is the xerox copy of charge sheet issued to the workman, dated the 4th October 1995. Ext. M is the xerox copy of explanation letter submitted by the workman, dated the 17th October 1995. Ext. N is the xerox copy of warning of caution letter, dated the 26th October 1995. Ext. P is the xerox copy of another charge sheet issued to the workman, dated the 11th January 1996. Ext. Q is the xerox copy of another transfer order of the workman, dated the 23rd February 1996. Ext. R is the xerox copy of reminder letter to the workman, dated the 2nd April 1996. Ext. S is the xerox copy of explanation letter submitted by the workman, dated the 4th April 1996. Ext. T is the xerox copy of show-cause letter, dated the 21st November 1996. Ext. U is the xerox copy of explanation letter, dated the 27th November 1996 against the show cause letter, dated the 21st November 1996. Ext. V is the xerox copy of another warning of caution letter, dated the 25th December 1996. Ext. W is the xerox copy of the letter call for explanation issued to the workman, dated the 17th/27th January 1997. Ext. Y is the xerox copy of the explanation letter submitted by the workman, dated the 24th January 1997. Ext. Z is the xerox copy of the warning of caution letter, dated the 5th February 1997 to the workman. Ext. A/A is the xerox copy of another show cause letter, dated the 11th February 1997. Ext. BB is the xerox copy of the warning letter issued to the workman, dated the 26th February 1997. Ext. CC is the xerox copy of removal letter issued to the workman, dated the 11th March 1997. Ext. DD is the xerox copy of resignation letter, dated the 22nd March 1997 submitted by the workman. Ext. EE is the xerox copy of transfer letter issued to the workman, dated the 30th May 1997. Ext. FF is the xerox copy of show cause letter issued to the workman, dated the 21st December 1997. Ext. GG is the xerox copy of advice-cum-show-cause letter, dated the 19th March 1999. Ext. HH is the xerox copy of explanation letter of the workman, dated the 19th March 1999. Ext. JJ is the xerox copy of letter of domestic enquiry of appointment of Enquiry Officer, dated the 3rd April 1999. Ext. KK is the xerox copy of enquiry report, dated the 15th April 1999. Ext. LL is the xerox copy of charge sheet, dated the 18th September 2000. Ext. MM is the xerox copy of explanation letter, dated the 27th September 2000. Ext. NN is the xerox copy of letter of domestic enquiry, dated the 28th October 2000. Ext. PP is the xerox copy of enquiry report, dated the 16th April 2001. Ext. QQ is the xerox copy of charge sheet, dated the 6th April 2001. Ext. RR is the xerox copy of explanation letter submitted by the workman, dated the 10th April 2001. Ext. SS is the xerox copy of disciplinary proceeding, dated the 24th September 2002. Ext. TT is the xerox copy of enquiry report, dated the 10th June 2002. Ext. UU is the xerox copy of the charge sheet, dated the 24th September 2004. Ext. VV is the xerox copy of explanation letter, dated the 8th October 2004. Ext. YY is the xerox copy of enquiry report along with proceedings, dated the 17th April 2005. Ext. ZZ is the xerox copy of charge sheet, dated the 10th March 2007. Ext. AAA is the xerox copy of explanation letter, dated the 13th March 2007. Ext. BBB is the xerox copy of enquiry report with proceedings, dated the 28th May 2007. Ext. CCC is the xerox copy of show cause letter, dated the 21st April 2007. Ext. DDD is the xerox copy of another show cause letter, dated the 2nd June 2007. Ext. EEE is the xerox copy of explanation letter submitted by the workman, dated the 2nd June 2007. Ext. FFF is the xerox copy of second show cause letter, dated the 6th October 2007. Ext. GGG is the xerox copy of explanation letter, dated the 12th October 2007. Ext. HHH is the xerox copy of termination letter of the workman, dated the 21st March 2008. Ext. JJJ is the xerox copy of the full and final settlement of receiving of Rs. 42,282 and Ext. KKK is the xerox copy of the cheque for Rs. 42,282, dated the 8th April 2009.

5. The reference is as follows :—

#### ISSUES

"Whether the action of the management of M/s Ballarpur Industries Ltd., Unit Sewa, Gaganpur, Jeypore, District Koraput, in terminating the services of Shri Dhanu Muduli,

ex-Helper with effect from the 27th March 2008 is legal and/or justified ? If not, what relief the workman is entitled ?"

The second party workman was working as a Helper under the first party management and was terminated from service with effect from the 27th March 2008. Challenging the termination, the workman approached the Labour Officer. Since conciliation failed, the matter has been referred to this Court by the Labour & Employment Department, Government of Odisha.

In order to terminate the workman, domestic enquiry was conducted. In the domestic enquiry the following charges were levelled against the workman vide charge in Ext. 2 which is as follows :—

On review of your attendance performance it is revealed that you are remaining absent from duty in habitual manner unauthorised and willfully under unsatisfactory pretexts thereby affecting the departmental work adversely.

Your attendance record from January, 2006 to December, 2006 reveals that you have remained absent without proper sanction of the department for 112.5 days which is viewed seriously by the management. The act committed on your part amounts to misconduct in terms of Clause No. 12 A(a) and B(ii) of the Certified Standing Order of the Company which calls for strict disciplinary action.

The Standing Order of the management Company as mentioned in the claim petition of the workman is as follows :—

SO.12-A. The following acts and omissions shall constitute Minor Misconducts.

(a) Absence from duty without authorised leave or sufficient cause.

SO. 12-B. The following acts and omissions shall constitute Major Misconducts.

(ii) Habitual absence without leave for more than 8 consecutive days.

In the domestic enquiry, Mr. B. Padhy, Advocate was appointed as Enquiry Officer. The workman contested in the domestic enquiry by filing written objection to the charge. In the enquiry, the workman (second party) was found guilty. So he has been removed from his service with effect from the 27th March 2008.

The workman has challenged his termination as illegal and unjustified on the following grounds :—

(i) Charge not specific and it is vague.

(ii) The appointment of Shri B. Padhy as an Enquiry Officer is illegal and not as per Standing Order of the Company.

(iii) Domestic enquiry not conducted properly and there is violation of natural justice.

However, the management has contended that the contention of the workman are not sustainable in the eye of law and are mere balled allegations. Perusal of the charge reveals that in the year 2006, the workman remained absent from duty for 112.5 days. In the charge it is not clearly stated from which date to which date the workman remained absent in duty. Thus the charge is indefinite and not specific. As per provisions of the Standing Order (Rule) 12(i), Major Penalty (termination from service) can be awarded if the workman had absented continuously at a stretch

for more than 8 days. There is no such clarity at all in the charge. In the evidence, the management witness No. 1 Shri Samir Rout has also not explained the specific date or length of the period of absence at a stretch. The charge (Ext. 2) being not specific, further proceeding thereafter does not rectify the defects of the charge. The proceeding is vitiated thereafter due to vague charge. In the Division Bench decision of the Hon'ble Orissa High Court reported in "2009 (Supp.-I) OLR-935, Ajit Kumar Dutta *Versus* Registrar (Judicial), High Court of Orissa, Cuttack and another" it has been held as to what would be the result of the proceeding where charge is vague. It has been held that :—

DISCIPLINARY PROCEEDINGS—An enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice—The charges should be specific, definite and giving details of the incident which formed the basis of charges—No enquiry can be sustained on the vague charges—Enquiry has to be conducted fairly, objectively and not subjectively—The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct—In the present case held, as the charges drawn up against the petitioner are totally vague and no specific instance, date and time of commission of the delinquency had been given—It would not be permissible to proceed with the disciplinary proceeding.

The decision relied on by management side reported in "2003 Lab. I.C. 1176 Maan Singh—Appellant *Vrs.* Union of India and others" is not applicable to the fact and circumstances of the present case because in the Standing Order in the instant case has got no provision to remove the delinquent employee from service as has been decided in the above said Supreme Court cases.

It is alleged that one Advocate should not have been appointed as Enquiry Officer. However management has relied on the decision reported in "2000—LLJ (Vol. I) Page 531, Indian Telephone Industries Ltd. *Vrs.* Devishankar Kumar Shukla" wherein it has been held that :—

"Domestic Enquiry—Appointment of an outsider as Enquiry Officer not contrary to Standing Order 16(2) (b) and does not vitiate enquiry."

In the decision reported in, "1999—LLR, 520 (S.C.) 1999 (82), FLR-56 management of Thanjavur Textile Ltd. *Vrs.* B. Purshotham and others" it has been held that :—

"An Advocate though an outsider will have the normal powers of an Enquiry Officer." So from the above cited S.C. decisions it is clear that anybody can be appointed as Enquiry Officer, unless it is contrary to the Standing Order. In the present case it is not shown on behalf of the workman that appointment of an Advocate as Enquiry Officer is contrary to the Standing Order of the management (Company). As per the claim statement at page 3 of the workman, the Standing Order 14(II) and Standing Order 2(b) are as follows :—

S.O. 14(II)—"Wherein the opinion of the management the act of misconduct alleged is considered *prima facie* serious, the management may by order suspend the workman pending enquiry. The enquiry shall be conducted by the management or by the officers or officers appointed by the management for this purpose as expeditiously as possible."

S.O. 2(b)—Management means, the Board of Directors, Managing Director, Joint Managing Director, General Manager and includes all persons employed or authorised to act in managerial and administrative capacity. An analysis of the above said two (2) rules mentioned by the workman, it is found that any person authorised or appointed by the management

can be an Enquiry Officer. So appointment of a lawyer as Enquiry Officer by the management is proper.

The workman has taken a plea that he has not been actually terminated but Ext. 6 was only an intimation of the Company (management) about their decision to terminate him for which he has not been terminated and continuing in service. This is a lame plea because the workman has received the termination benefits without any objection. Moreover, as per reference, the Court is to decide whether the termination is legal or justified or not. This being the position, Ext. 6 is treated as the termination letter. The workman has taken another plea that the enquiry report was not supplied to him with the show cause notice for which the proceeding is bad. In the decisions reported in "1998-LLR-420, Union Bank of India Vrs. Vishawa Mohon" and "2001-LLR-753, Oriental Insurance Co. Ltd. Vrs. S. Bal Krishna" it has been held that :—

"Non-furnishing of enquiry report to employee on dismissal will not vitiate the same."

Perused all the citations filed by both the parties which are not applicable to the fact and circumstances of the present case. The other exhibited documents neither improve nor derogate the case of either party.

In view of the decisions and conclusions arrived at above, the net conclusion is that, termination of the workman from service is illegal and not justified because the charge (Ext. 2) on the basis of which he was terminated is held to be vague and unspecific. So he should be reinstated in service. The conduct of the workman, as pleaded by the management, reveals that he was a habitual defaulter and not attentive in his service. Also no cogent evidence has been led to come to a conclusion that the workman was not in gainful employment during the period of his termination. So no back wages is allowed to him. Hence ordered :

#### ORDER

The reference is answered on contest against the management and in favour of the workman. The termination of service of the workman (Dhanu Muduli), ex-Helper, with effect from the 27th March 2008 by the management is not legal or justified. The management is directed to reinstate the workman in his post without any back wages within three months of the publication of the Award.

Dictated and corrected by me.

D. C. MISHRA  
8-10-2012  
Presiding Officer  
Labour Court, Jeypore

D. C. MISHRA  
8-10-2012  
Presiding Officer  
Labour Court, Jeypore

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By order of the Governor  
J. DALANAYAK  
Under-Secretary to Government